DHS/Mental Retardation/Developmental Disabilities Administration

Transmittal Letter No.

Location: **Distribution:**

SUBJECT: Rights of Persons with Mental Retardation and/or Developmental Disabilities to the Provision of Services and Supports in the Most Integrated Community Setting

Date: November 1, 2001

This policy provides principles, guidelines, and procedures to assist persons who are consumers of Department of Health Services, Mental Retardation and Developmental Disabilities Administration (DHS/MRDDA) to obtain services and supports in the most integrated community-based setting that is most appropriate to the needs of the individual.

This policy applies to all employees of the Department of Human Services, Mental Retardation Developmental Disabilities Administration (DHS/MRDDA) and all **individuals** and agencies that provide services or supports to **persons** with mental retardation and/or developmental disabilities through funding, contract or provider agreement with the District of Columbia. All paid staff, subcontractors and consultants of such agencies, and volunteers or other persons recruited to provide services and supports on behalf of the persons with mental retardation and other developmental disabilities, are subject to the requirements of this policy.

Revisions:

Amendments:

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Bruce C. Blaney Date
DHS/MRDDA Administrator

Carolyn W. Colvin 11/27/01

Carolyn W. Colvin Date
DHS Director

DHS/Mental Retardation/Developmental Disabilities Administration

POLICY AND PROCEDURE

Transmittal Letter No. Supersedes Manual Location

SUBJECT: **Rights of Persons with Mental Retardation and/or Developmental Disabilities to the Provision of Services and Supports in the Most Integrated Community Setting**

CHAPTER NUMBER:

I. PURPOSE

This policy provides principles, guidelines, and procedures to assist persons who are consumers of Department of Health Services, Mental Retardation and Developmental Disabilities Administration (DHS/MRDDA) to obtain services and supports in the most integrated community-based setting that is most appropriate to the needs of the individual.

Further, this policy establishes criteria for the use of nursing homes, and sets forth the expectation that nursing home admission and continued stay will only occur after due consideration of medical necessity and when the person's need for nursing care cannot be addressed through implementation of home-based and community services or an Intermediate Care Facility/Mental Retardation with nursing staff.

II. SCOPE

This policy applies to all employees of the Department of Human Services, Mental Retardation Developmental Disabilities Administration (DHS/MRDDA) and all **individuals** and agencies that provide services or supports to **persons** with mental retardation and/or developmental disabilities through funding, contract or provider agreement with the District of Columbia. All paid staff, subcontractors and consultants of such agencies, and volunteers or other persons recruited to provide services and supports on behalf of the persons with mental retardation and other developmental disabilities, are subject to the requirements of this policy.

III. AUTHORITY

The authority of this policy is established in D.C. Code §7-1301 et. seq.; *Evans v. the District of Columbia*, June 14, 1978; *and Evans v. Williams*, 35 F. Supp. 2d 88, 97 [D.D.C, February 10, 1999. DC Code 2-137: 2001 Plan For Compliance and Conclusion of *Evans v. Williams*; DC Code, Title 6, PL. 93-112, Human Rights Act of 1964. ***[Get citation for Abuse and Neglect Statute]***

IV. DEFINITIONS

Community Residential Facility (CRF) or Group Home for Mentally Retarded Persons (GHMRP): A residence that provides a home-like environment for at least four (4) but no more than six (6) related or unrelated individuals with mental retardation or other developmental disabilities who require specialized living arrangements, and that maintains necessary staff, programs, support services and equipment for their care and habilitation.

Home: Refers to the house, apartment, condominium, or other place in which the individual lives in the community, including those owned or rented by the consumer, or residential facilities licensed by the District of Columbia. Homes can include, but are not limited to, independent living situations, the family home of the consumer, Community Residential Facilities (CRF), Intermediate Care Facilities, Mental Retardation (ICF/MR).

Individual Support Plan (ISP): A written statement developed by a planning team chosen, whenever possible, by the individual with developmental disabilities or his/her guardian. The ISP serves as the single document that integrates all supports a person may receive irrespective of where the person resides. The ISP integrates the Plan of Care (POC) required by the District of Columbia's Home and Community Based Waiver (HCBS), and the POC required by Medicaid for nursing homes. The ISP presents the measurable goals and objectives identified as required for meeting the person's preferences, choices, and desired outcomes. The ISP also addresses the provision of safe, secure, and dependable supports that are necessary for the person's well-being, independence, and social inclusion. For the purposes of this policy, Individual Support Plan (ISP) and Person Centered Individual Support Plans (PCISP) are interchangeable.

Individual Supports: Provision of supports that maintain skills and/or prevent the loss of skills and assist a person to achieve outcomes in rights and dignity, individual control, community membership, relationships, personal growth and accomplishments, and personal well being, including those that are part of a comprehensive set of residential and work/day services.

Intermediate Care Facility/Mental Retardation (ICF/MR): A home or facility **for up to eight (8) persons with mental retardation and/or developmental disabilities certified** by the D.C. Department of Health to provide habilitative and health services

under federal healthcare regulations *[Verify ICF/MRS can legally serve people with other developmental disabilities.]*

Most Integrated Setting: Settings, modes of services, and styles of living or working that are most similar to and most integrated with what is typical and age-appropriate in the community, which interfere the least with the individual's independence, and promote the opportunity to actively engage with other citizens who live or work in that community.

Nursing Home: An institution (or distinct part of an institution), **which provides skilled** nursing care and related services for residents who require medical or nursing care, rehabilitation services for the rehabilitation of injured, disabled or sick persons, or on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services which can be made available to them only through institutional facilities, and is not primarily for the care and treatment of mental diseases.

Residential Supports: Routine provision of services or assistance at home and in the community in accordance with the Individual Support Plans (ISP), that are designed to foster rights and dignity, individual control, community membership, relationships, personal growth and accomplishments, and personal well being (health, safety, and economic security). Residential supports can be provided in the consumer's home or a home maintained by a residential provider. Examples of residential support include but are not limited to, overnight staff or staff that check in with the consumer at a specified time, or a 24-hour call line available to a consumer to assist with issues that may arise after business hours. Residential supports may be provided on a 24-hour basis or for less than twenty-four (24) hours.

Work/Day Supports: Refers to the routine provision of services and assistance provided in accordance with a person's ISP that are designed to help the individual obtain or maintain paid employment; to foster vocational skills to assist in the movement toward paid employment; to support retirement activities; or to assist the individual to gain the social and leisure skills necessary for increased presence and independence in the community.

V. POLICY

Services and supports for consumers of DHS/MRDDA shall be offered in the most integrated community setting appropriate to the needs of the individual. **The planning process shall be person-centered and start with the assumption that all individuals can live in the most inclusive setting possible and that services and supports should foster community integration in housing, work or education, and social and spiritual life. Services and supports shall provide meaningful assistance to the individual in acquiring and maintaining those physical, mental, and social skills that enable the person to cope most effectively with the ordinary stresses of community life, while actively participating in typical activities of the community. To promote**

development of inclusive supports for persons in their communities, DHS/MRDDA has defined a set of home and community based services. (Refer to DHS/MRDDA's *Home and Community Based Service Descriptions.*)

It is a basic right of individuals to obtain services and supports in the most integrated settings. Any limitations on rights must be addressed through the Individual Support Plan (Refer to DHS/MRDDA's Policy on *Individual Support Plans*) and reviewed by the Human Rights Committee (Refer to DHS/MRDDA's Policy on *Behavior Support and Restricted Controls*). Section C of this policy outlines specific safeguards related to limitations on rights.

A. Basic Rights of Individuals to Services and Supports in the Most Integrated Community Setting

Individuals with mental retardation and/or other developmental disabilities have the fundamental right to gain and sustain an optimum level of independence and competency to make decisions and have control over their lives and choices. Services and supports shall be provided in a manner that promotes:

1. Human dignity.
2. Self-determination and freedom of choice to the individual's fullest capability.
3. The opportunity to live and receive services in the most integrated and most inclusive setting possible.
4. The opportunity to undergo typical developmental experiences, even though such experience may have an element of risk, provided that the individual's safety and well being shall not be unreasonably jeopardized. (Refer to DHS/MRDDA'S requirements on the role of the Human Rights Committee review in the *Behavior Support and Restricted Controls Policy.*) The opportunity to engage in activities and styles of living that encourage and maintain the integration of the person in the community, including:
    a. Social integration in settings typical of the community, which maximize the individual's contact with others who live or work in that community.
    b. Maintaining a personal appearance that is appropriate to the individual's chronological age and the practices of the surrounding community and that is consistent with his or her choices and preferences and social and cultural background.
    c. Active engagement in activities, patterns, and routines of living that are appropriate to the person's age and the practices of the surrounding community, and that are consistent with his or her interests and choices.
    d. Communications that are courteous, respectful of the dignity of the individual, and facilitate the person's understanding of what is being communicated.
    e. Active participation in recreation and leisure time activities in the community, which are appropriate to the individual's age, interests, and choices.

f. A home in a community integrated setting in which the person feels safe, and that is physically accessible to public transportation and community resources, such as parks and pools.
g. Possessions, which are appropriate to the individual's age and consistent with the individual's interests and choices.
h. Privacy, including the opportunity wherever possible, to be provided clearly defined private living, sleeping, entertaining, and personal care spaces.
i. Freedom from discomfort, distress, and deprivation that arise from an unresponsive and inhumane environment.

B. Other Rights of DHS/MRDDA Consumers

Consumers shall have, in addition to the rights specified above or in applicable D.C. federal laws or judicial decrees, the following rights:

1. The right to communicate, including:
   a. Access to a telephone and opportunities to make and receive confidential calls, and to have assistance when desired and necessary to implement this right.
   b. Unrestricted mailing privileges, to have access to stationery and postage and to assistance when desired and necessary to implement this right.
   c. The right to be protected from private and commercial exploitation by providers, including: the right not be exposed to public view by photograph film, videotape, interview, or other means, unless prior written consent of the person or guardian is obtained for each occasion of release; and the right not be identified publicly by name or address without the prior written consent of the individual or guardian.
2. The right to follow or abstain from religious practice of the person's choice.
3. Freedom of movement tempered with a person's need for supports to adequately protect him or her from harm.
4. Control over personal finances.
5. Support in developing and maintaining reliationships.
6. Privacy of records, files, and histories.
7. Civic rights afforded other citizens, such as the right to vote.
8. The right to receive visitors in their homes whenever desired and to have privacy during visits, including the privacy enjoyed by adults in social relationships.

9. The right to enjoy basic goods and services without threat of denial or delay for any purpose:
    a. A nutritional sound diet of appetizing food served at appropriate times and in as normative manner as possible, and based on the person's preferences.
    b. Opportunities for daily recreation and physical exercises, as appropriate to the age and interests of the individual.
    c. Unrestricted access to food, drinking water, and bathrooms.
    d. Arrangements for, or provision of, an adequate allowance of neat, clean, appropriate, and seasonable clothing that is individually owned, reflects the preferences of the person, and maintained in his or her personal space.
    e. Opportunities for social contact in the individuals' home, work, or community environments.
    f. Opportunities to keep and use personal possessions.
    g. Access to individual storage space for personal use.
    h. **Opportunities for privacy in connection with hygiene, health, sex, medication administration and other medical procedures.**
    i. Right to decline a service or support.

C. Restrictions on Rights

Any restriction or limitation of rights requires documentation by the individual's ISP team of the reasons for the restriction; actions being taken to restore the person's ability to exercise these rights; and review by a Human Rights Committee. The development or modification of a behavior support plan consistent with the requirements of DHS/MRDDA's Policy on *Behavior Supports and Restricted Controls* may also be necessary.

D. Abuse or Mistreatment

No person covered under the scope of this policy shall abuse or mistreat an individual or permit the abuse or mistreatment of an individual by persons in its employ or subject to its direction. (Refer to DHS/MRDDA's Policy on *Incident Management.*)

VI. REQUIREMENTS

Each MRDDA consumer shall have an ISP that emphasizes provision of services and supports in the most integrated community settings that interfere the least with the individual's independence, and promote the opportunity to actively engage with other citizens who live and work in that community. DHS/MRDDA's policy: *Individual Support Plan* outlines the process and procedures for ISP development, including the responsibilities of participants in the ISP process. The following requirements are supplemental to ISP development.

A. Most Integrated Work/Day Supports

The ISP shall emphasize provision of services and supports that assist the individual to obtain and maintain paid employment; foster vocational skills to assist in the movement toward paid employment; support retirement activities; or to assist the individual to gain the social and leisure skills for increased presence and independence in the community. **If the most integrated work/day supports for the person are not available, the unmet needs of the consumer shall be clearly identified in the ISP whether or not such services are currently available and the ISP team will develop, document, and implement an action plan to meet those needs.**

B. Most Integrated Residential Supports

The ISP shall emphasize residential supports that promote the individual's independence and the opportunity to actively engage with other citizens who live and work in that community. Toward this goal, the ISP team process shall consider residential supports that actively promote and enhance each person's growth, attainment, and maintenance of independence, and that least interfere with the person's independence yet provide the services that address the individual's needs. The determination of residential supports, including 24-hour staffing, shall depend on the needs of each consumer as determined by the ISP process. **If the most integrated residential supports for the person are not available, the unmet needs of the consumer shall be clearly identified in the ISP whether or not such services are currently available and the ISP team will develop, document, and implement an action plan to meet those needs.**

C. Criteria for Use of Nursing Homes

Because nursing homes provide an intensive level of care that may be overly restrictive for **most** individuals who require medical and rehabilitative supports. DHS/MRDDA has established the following criteria for the appropriate use of nursing homes. Nursing **homes should only be used as a last resort** and when there is a:

1. Need for a time-limited stay following hospitalization where the rehabilitation requires the availability of skilled nursing staff on a twenty-four (24) hour

basis. Such a referral and placement must be directly related to a prior hospitalization.

2. Need for medical supports that minimize deterioration in abilities and maximize quality of life and cannot be provided in the person's current level of care, nor can be provided in a more intensive community based alternative, such as an ICF/MR, and home and community based interventions **are currently unavailable to** address the person's medical support needs.

D. Procedures for Use of a Nursing Home

A consumer's Individual Support Plan (ISP) must recommend placement into a nursing facility, therefore, when use of a nursing home is under consideration, an ISP must be developed, amended or revised. (Refer to DHS/MRDDA's Policy on Individual Support Plans.) As part of the ISP process, the person's current service provider(s) and medical staff must be involved in the planning process and should be present at the ISP meeting. The recommendation must include a medical justification and supporting documentation. The ISP must include the involvement of the consumer, his/her family or guardian and advocate, if any, and result in obtaining written informed consent of the consumer or guardian, prior to forwarding a recommendation for consideration of a nursing facility referral. If there is no guardian, the Surrogate Decision-Making Committee must review and approve the **referral and placement**. (Refer to the District of Columbia's Surrogate Decision-Making Process).

1. The ISP must provide documentation that no alternative community setting, including an ICF/MR facility is appropriate. The documentation must include the names and location of alternate options explored and considered inappropriate. The lack of an existing opening is no justification for a nursing home placement.

2. **The justification must also include a description of the specific supports and services required due to the person's diagnosis and medical status, and which of these services and supports can and cannot currently be provided outside a nursing home. Age is not reason for referral to a nursing home.**

3. The ISP process must include an independent evaluation that supports the decision for nursing home placement and confirms that no more integrated or less restrictive settings can address the needs of the individual. The independent assessment must be completed by a licensed medical professional with expertise in assessment of community support needs that is not directly involved in the person's ongoing care. The independent assessment must determine that placement in a nursing facility having more than eight (8) people is the least separate, most integrated setting to provide such services, for a nursing home placement to be recommended by the ISP team.

4. The ISP team, in conjunction with the independent assessor, must also address whether there are additional behavioral or other supports not customarily provided by nursing homes that must be provided to the person while in the nursing home, so that the consumer's needs, as specified in the ISP are met. The MRDDA case manager will work with the nursing home to implement the ISP, to assist the nursing home staff with understanding the person's needs, preferences, and communication style**, and to document these efforts in the ISP.**

5. The ISP team must specify a transition plan to facilitate communication between the nursing home and the person, the MRDDA case manager, current service providers, family or guardian, people who might be part of a consumer's support network, and advocates (if any). The purpose of the transition plan is to facilitate understanding of the person's needs **and to implement the supports necessary to enable the person's return to a more integrated community setting.**

6. The ISP team must specify a planning process to address the needs of the consumer, so that once placed, there is an aggressive effort to eliminate any barriers to return to the place where the consumer lived prior to the nursing home placement, or to explore other more appropriate residential supports. The consumer's preferences and choices must guide this planning process. The consumer's home prior to the nursing home placement, if provider-operated, must maintain a vacancy for **up to** eighteen (18) days for ICFs/MR and thirty (30) days for other residential services, to facilitate the person's return, if the consumer prefers to return and appropriate supports can be instituted. **(Verify with MAA that they will allow this.)**

7. The MRDDA must screen all recommendations for nursing home placements prior to any referral or contact with a nursing facility. The MRDDA may request additional information prior to approving the referral and placement of the consumer into a nursing home. The MRDDA will also
   a. **Confirm that the consumer, family or guardian is in agreement with the recommendation, or in the instance when the consumer is not able to make an informed decision and provide consent and there is no guardian, the Surrogate Decision-Making Committee has reviewed and approved the referral and placement.**
   b. There exists a current ISP with the recommendation and supporting medical justification and documentation.
   c. There exists an independent review by an evaluator and the evaluation supports the decision and confirms that no more integrated or less restrictive setting is appropriate to meet the needs of the person.
   d. The consumer's physician supports the recommendation and provides a plan of care for the consumer.

e. In the case of committed clients, approval from the District of Columbia Superior Court.
f. The results of the Pre-Admission Screening and Annual Resident Review Process (PASARR) recommend placement.
g. The nursing home is able to adequately address the needs of the person.

8. The MRDDA will determine the appropriateness of the referral within ten (10) working days of receipt of a complete and comprehensive information package. In urgent situations, the process shall be expedited so that placement in the most integrated and least restrictive setting occurs without disruption to the consumer and a determination made by the MRDDA as soon as possible.

9. The MRDDA will notify the case manager of the decision to either pursue a referral to a nursing facility or to seek alternate services. If the consumer and/or guardian do not agree with the MRDDA's findings, he or she has the right to request reconsideration or file an appeal. (Refer to DHS/MRDDA's Policy on *Grievances and Appeals).* In addition, **all consumers** or their representatives may seek relief from Superior Court of the District of Columbia in lieu of the grievance process.

10. The MRDDA will assign caseloads so that the MRDDA case manager can provide intensive support to the consumer and consultation to the nursing facility, during the transition period and placement at the nursing facility. The MRDDA will make every effort to assign case managers who have experience with complex medical needs. **(Refer to DHS/MRDDA's Policy on *Intensive Case Management.*)**

11. The case manager, with the consultation of the ISP team and the person's current program staff, must evaluate whether the nursing home is able to meet the needs of the consumer. Such evaluation will be written and based on a standard protocol established by MRDDA.

12. The case manager shall coordinate the nursing home placement with the following entities:
    a. Hospital or residential provider where the consumer currently resides.
    b. District of Columbia Superior Court for persons who are committed.
    c. Department of Medical Assistance for the Pre-Admission Screening and Annual Resident Review Process (PASARR).

13. The case manager will arrange for a conference with the nursing home, the consumer, family or guardian, advocates, and current staff to address the following issues:
    a. Arrange logistics of the move to the nursing home.
    b. Finalize the transition plan.

c. Arrange for additional behavioral or other supports as specified in the ISP that must be provided to the person while in the nursing home and are not customarily provided by nursing homes.
d. Identify staff and persons in the consumer's support network that can provide information and consultation to the nursing home throughout the consumer's transition and stay.

14. The MRDDA, in consultation with the case manager and the ISP team, will determine the frequency of reviews to determine the ongoing appropriateness of a nursing home placement for stays beyond thirty (30) days. The required review period is at **least eight (8) visits per year**. However, the MRDDA or the person's ISP team may determine more frequent reviews are necessary.

15. The MRDDA will establish a review process at least annually of consumers living in nursing facilities. Appropriately trained and licensed personnel will complete an independent evaluation, when appropriate.

16. If the annual evaluation determines a nursing home placement is inappropriate, the MRDDA shall have the authority to require the ISP team to reconvene to develop alternate options for the consumer and/or to provide additional justification and documentation for its recommendation.

17. No consumer shall move to nursing facility without the written informed consent of the consumer or the legal guardian. Such informed consent shall include a full discussion of alternatives to nursing placement such as home and community based services or placement in an ICF/MR with nursing supports, in a manner that the consumer, the family and/or guardian is like to understand. If desired, the consumer, family/or guardian should be offered the opportunity to visit other types of residential services. **If the consumer cannot provide consent and there is no guardian, the Surrogate Decision-Making Committee must review the referral.**

18. The MRDDA shall follow the process for advocacy services established by the Quality Trust when any consumer is being considered for a nursing home placement.

19. **The MRDDA will notify the Quality Trust and the Human Rights Committee when any consumer is referred to a nursing facility.**

20. **The MRDDA will notify the Court Monitor when an Evans class member is referred to a nursing facility.**

21. **The standards in this policy shall apply to all persons with mental retardation and/or developmental disabilities currently placed in nursing homes. The MRDDA shall review all placements of MRDDA consumers residing in nursing homes prior to the effective date of this**

policy to determine the appropriateness of the level of service. The MRDDA shall develop ISPs for these individuals that focus on provision of the most integrated supports and services and a plan for relocation of persons who are inappropriately placed in nursing homes.

22. The MRDDA shall establish ongoing competency-based training for case managers and providers on the use of most integrated community settings.

23. The MRDDA shall offer ongoing training and technical assistance for nursing home staff on person-centered supports and plans. Technical assistance to nursing facilities will be provided by case managers in their routine performance of their duties and by the MRDDA upon request.

24. The MRDDA shall provide technical assistance to any party in the process of determining the need for a nursing facility for an MRDDA consumer upon request.

25. MRDDA shall take a proactive case management approach for persons who are being considered for referral to a nursing home. However, if transition to a nursing home occurs without DHS/MRDDA's knowledge, the case manager will convene an ISP meeting as soon as possible but no later than ten (10) working days after being informed of the placement.

E. Process to Address the Unavailability of Appropriate Services

The MRDDA case manager is responsible to document the unavailability of services within the ISP and the efforts made to develop services and supports. If the most integrated supports for the person are not available, the unmet needs of the consumer shall be clearly identified in the ISP whether or not such services are currently available and an action plan will be developed and implemented to meet those needs. The MRDDA will work with the ISP team to develop appropriate supports to meet the person's needs as promptly as possible. In the event that the appropriate resources cannot be found, the matter will be referred to the MRDDA Administrator for assistance with addressing funding constraints or development of new services. Unmet needs will be aggregated and specific systemic plans, including necessary funding, will be developed and implemented within the next budget cycle.